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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/622,803

07/21/2003

Rudolf Bertagnoli

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EXAMINER

SWIGER III, JAMES L

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

04/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/622,803

**Applicant(s)**

BERTAGNOLI, RUDOLF

**Examiner**

JAMES L. SWIGER

**Art Unit**

3733

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 19-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 19-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/5/2007; 10/28/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

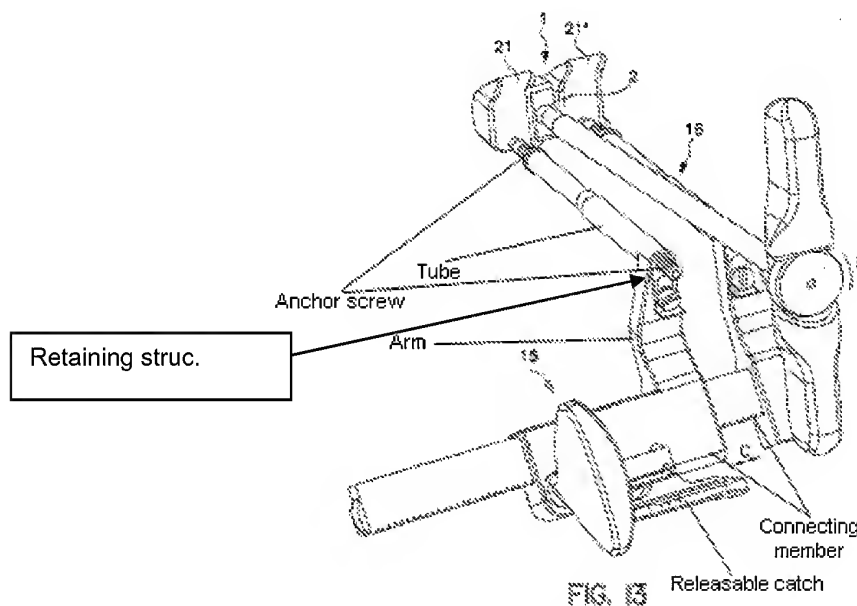
Claims 1-14 and 19-35 are rejected under 35 U.S.C. 102(b) as anticipated by Bolger et al. (US Patent 6,770,096) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cleveland, Jr (US patent 2,774,350).

Bolger et al. disclose an instrument for spreading at least two adjacent vertebrae (16) and/or retaining at least two adjacent vertebrae in a spaced apart condition, a frame member comprising at least two arms each arm having a tube, a connecting member, connecting the arms for movement of the arms toward and away from each other and a plurality of anchor screws (see figures 10- 12 and figure 13 below).

The connecting member comprises a connecting bar having two telescopic members, one arm connected to each of the telescopic members, such that telescopic movement of one of the telescopic members relative to the other causes the arms to move toward and away from each other (see figures 10-12 and figure 13 below). The inner of the two telescopic members being a toothed rod and the outer of the two telescopic members having a toothed wheel fixed thereto which engages the toothed rod for moving the two telescopic members relative to each other (see figures 10-12 and figure 13 below). A releasable catch is mounted on the outer of the telescopic members

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and engaging the teeth on the inner of the telescopic members for permitting free movement of the two telescopic members relative to each other in one direction but stopping movement of the two telescopic members relative to each other in the other direction (see figures 10-12 and figure 13 below).



It is further noted, as shown above that Bolger et al. also teaches that the anchor screws have a “rear end” and that a retaining structure (shown above) secures each of the anchor screws in place. There is a retaining structure shown for both of the anchor screws above. Only one is specifically noted.

Bolger et al. anticipates the claimed device. However, in the alternative, Bolger et al. disclose the claimed invention except for the rear end of the screws having threads to engage with a retaining structure for securing each of the anchor screws to its

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respective tube, wherein the retaining structure engages the rear threaded end of the anchor screw and securely tightens it against the rear end of the tube, and wherein the retaining structure comprises a threaded nut, which threadedly engages the rear end of the anchor screw.

Cleveland, Jr. discloses a spinal alignment device that has a rear end that is threaded and that has a retaining structure that attaches to this threaded portion for improved fixation and immobilization (see end at 34 with 18). These nuts help to hold the ends of the anchor screws in place. It is also noted that using threads or some kind of retaining structure for better fixation, generally, is well known in the art, in addition to what is shown in Cleveland, Jr. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Bolger et al. having at least threaded ends of anchor screws that could then be further secured with a retaining structure that attaches to said threads in view of Cleveland, Jr. to have better stability during the use of the instrument for realigning vertebrae.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-14 and 19-35 have been considered and are persuasive and are further moot in view of the new ground(s) of rejection.

### ***Finality***

The finality of the previous action dated 3/26/2007 has been withdrawn after further consideration of applicant's arguments dated 2/1/2008. New rejections are shown above.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES L. SWIGER whose telephone number is (571)272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES L SWIGER/  
Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733